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10/562,535	12/28/2005	Philippe Gentric	FR 030075	6002
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NXP, B.V. NXP INTELLECTUAL PROPERTY & LICENSING M/S41-SJ 1109 MCKAY DRIVE SAN JOSE, CA 95131			DUBASKY, GIGIL	
			ART UNIT	PAPER NUMBER
			2421	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

Office Action Summary	Application No. 10/562,535	Applicant(s) GENTRIC ET AL.	
	Examiner GIGI L. DUBASKY	Art Unit 2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Claims 1-10 are pending.

The object of Drawing is withdrawn in view of the amendments.

The object of claim 10 is withdrawn in view of the amendment.

The reject of claim 10 under 35 U.S.C. § 101 in view of the amendment stands with further explanation in below 35 U.S.C. § 101 rejection.

1. Applicant's arguments in the Remarks filed on 01/29/2010 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 claims "a computer-readable medium storing a computer program for implementing a method according to claim 1." However, the Applicants' specification does not define a computer-readable medium in any specific way (see Applicants' specification). With a broadest reasonable interpretation, the computer-readable

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medium is not excluded from forms of propagated signals that a computer program may be formatted on, and is thus non-statutory for that reason.

Therefore, the full scope of claim 10 as properly read in light of the disclosure encompasses non-statutory subject matter, i.e., signal, the claim as a whole is non-statutory, under the present USPTO Guidelines.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaning et al (WO 02/49343 A1) of the record in view of Stumpf et al (US 5222219).

Regarding claim 1, Leaning discloses a server ("server 1" in Figure 1) having access to at least one set of files (S_i) generated by slicing an encoded multimedia content in at least one set of slicing positions ($\{T_{i,1}, \dots, T_{i,K}\}$) forming slices that can be decoded independently one from the other, and by enclosing each slice in a file (F_{ij}) thereby generating at least one set of files (page 3 lines 5-22), said server comprising: means for receiving an initial request directed to a multimedia content from a client device (page 2 lines 16-17),

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means for sending a document to said client device upon reception of said initial request, said document causing said client device to repetitively send a fetching request designating said multimedia content (page 6 lines 5-8 for in the case of the sub-file given a random name, not a simple fixed length sequence of numbers starting with zero, the server sends name of the first sub-file and an algorithm to calculate succeeding ones or sends a list of the filenames to the terminal's player program; and see the summaries of process between the terminal and the server in the flowchart of pages 9-10 for the terminal repeatedly sends a fetching request for subsequent sub-files of content (going to step J1 in looping) after receiving the instruction from the server. In other words, Leaning clearly discloses that in the case of randomly named sub-files, after receiving the request message from the terminal, the server sends to the terminal a response/a document including the first sub-file's name and an algorithm of calculation of succeeding ones or a list of filenames which instructs the terminal repeatedly sends a fetching request for the rest of subsequent sub-files of content), means for selecting at least one file amongst said set(s) of files, upon reception of said fetching requests from said client device (see the flowchart in page 10 for the server enables to check whether the requested sub-file exists or not, in case of sub-file's existence selects requested sub-file among a set of files and sends it in response to fetching requests from the terminal), and means for downloading the selected file(s) to said client device (page 2 lines 16-18 and page 5 lines 13-14 for transmitting required sub-file to the terminal in response to request message).

Leaning fails to disclose the fetching request does not identify a specific file to be sent from the server to the client device.

Stumpf discloses a data transmission system from a first device to the second device which the second device sends an acknowledge signal indicating the success or failure of transfer to the first device (abstract, Col 2 lines 25-30 and 43-51). Stumpf's acknowledge signal from the second device causing the first device to continuously transmit the next data block (ACK indicating success of data transfer) or to retransmit the missing data block (ACK indicating failure of data transfer) has equal function as a fetching request. The ACK signal does not identify a specific data block or file to be sent because it just indicates the success or failure of data transfer from the first device to the second device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Leaning with the receipt of ACK signals from the client device just indicating the success or failure of data transfer as taught by Stumpf, so to simplify the content of message and reduce the work for the client device.

Regarding claim 5, all limitations of claim 5 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 1. So, claim 5 is rejected under the same rationale as claim 1.

Regarding claim 9, Leaning discloses a network system (see Figure 1) comprising:

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a source for acquiring a multimedia content (page 1 lines 13-14 for “server 1” stores a set of files representing successive portions of audio or video material. It means that the server includes a source for acquiring content),

an encoder encoding said multimedia content (page 1 lines 20-24 for transmitting digitally coded/encoded audio or video material from the first station/server. It means that server must include an encoder),

a slicer for slicing said encoded multimedia content in at least one set of slicing positions forming at least one set of slices that can be decoded independently one from the other, and for enclosing each slice in a file thereby generating at least one set of files (page 1 lines 20-24 for partitioning the material into a plurality of discrete files. It means that server couples to a slicer),

a distribution network (“internet 2”),

an access provider for providing a client device with an access to said distribution network (page 2 lines 5-13 for the “internet 2” also performs function as an access provider to provide “terminal 3” with an access to telecommunication network via “communication interface 35” in Figure 2), and

a server (“server 1”).

Leaning in view of Stumpf discloses a server as discussed in the rejection of claim 1.

Regarding claim 10, Leaning in view of Stumpf discloses a computer-readable medium storing a computer program for implementing a method according to claim 1

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(taught by Leaning; page 2 lines 5-32 for server must be implemented by software and hardware to perform functions).

5. Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaning et al (WO 02/49343 A1) of the record in view of Stumpf et al (US 5222219) and further in view of Lai (US 2003/0236864).

Regarding claim 2, Leaning in view of Stumpf discloses the server as discussed in the rejection of claim 1. The combined system further discloses the document contains a resource identifier designating said multimedia content and specific to the client device (taught by Leaning; see the flowchart in page 9 for the server sends a response which includes a resource identifier of requested content (http://server1.com/mp3_bwv565/link.htm) to requested terminal upon receiving a request message), and causes the client device to repetitively send fetching requests containing said resource identifier (taught by Leaning; see the flowchart in page 10 for the terminal repeatedly sends a fetching request for subsequent sub-files of content (going to step J1 in looping) after receiving the instruction from the server), and said server further comprises:

means, activated upon reception of a first fetching request, for selecting a first file to be downloaded amongst said set(s) of files (taught by Leaning; page 6 lines 5-8 for in the case of sub-file given a random name not a simple fixed length sequence of numbers starting with zero, the terminal's player program is sent the name of the first sub-file and an algorithm to calculate succeeding ones or is sent a list of the filenames from the

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server after sending the initiated request message), and means, activated upon reception of subsequent fetching requests, for checking in order to select the next file to be downloaded (taught by Leaning; see the flowchart in page 10 for the server enables to check whether the requested sub-file exists or not, in case of sub-file's existence selects requested sub-file among a set of files and sends it in response to fetching requests from the terminal).

The combined system does not explicitly disclose keeping a record of said resource identifier together with an indication of the selected file at the server and updating the record.

Lai discloses a file downloading system allowing user to download file resources provided from the website server which establishes the file downloading record by utilizing member number and file identification number from member database and file resource database respectively in a file downloading database of the website server and divides the requested file into a plurality of packets which also are stored in file downloading record (¶ [0006]). This file downloading record is maintained and updated to keep track of what next packet to be transmitted in case of interruption or whether the file is successfully downloaded to the user (¶ [0007]-[0008] and ¶ [0022]).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the server of the combined system with the capability of keeping the record of file downloading as taught by Lai, so to provide a time-effective downloading system which enables to continue downloading un-

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transmitted part of the file due to interruption without re-downloading previously transmitted parts (taught by Lai; ¶ [0032]).

Regarding claim 3, Leaning in view of Stumpf and further in view of Lai discloses the server as discussed in the rejection of claim 2. The combined system further discloses the document comprises an instruction for the client device to send a subsequent fetching request before the end of the playback of the file that was downloaded in response to the previous fetching request (taught by Leaning; page 15 line 12 through page 16 line 5 for offering an option of having files pre-loaded).

Regarding claim 4, Leaning in view of Stumpf and further in view of Lai discloses the server as discussed in the rejection of claim 2. The combined system further discloses means for selecting a file to download based on a jump indication contained in said fetching request (taught by Leaning; page 11 line 12 through page 12 line 7).

Regarding claim 6, all limitations of claim 6 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 2. So, claim 6 is rejected under the same rationale as claim 2.

Regarding claim 7, all limitations of claim 7 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 3. So, claim 7 is rejected under the same rationale as claim 3.

Regarding claim 8, all limitations of claim 8 are analyzed corresponding to the functionalities of the server as discussed in the rejection of claim 4. So, claim 8 is rejected under the same rationale as claim 4.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GIGI L. DUBASKY whose telephone number is

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(571)270-5686. The examiner can normally be reached on Monday through Thursday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

GD